

To,
Mr. Wasi Ahmad
Advisor (B & CS)
Telecom Regulatory Authority of India
New Delhi.

DT: 2nd May 2013

Sub:-Comments/suggestions on the Draft Tariff Order for Direct to Home Broadcasting Services

Ref:-Draft Tariff Order for supply of Customer Premises Equipment (CPE), released by TRAI on 11th April 2013

Respected Sir,

This has reference to the above captioned draft Tariff Order for Direct to Home Broadcasting Services released by the Hon. Authority on 11th April 2013. We strongly believe that Hon'ble Authority endeavors to promulgate various Polices, Recommendations, Regulations keeping balance between consumer and business interest of DTH Service Providers. After going through the proposed CPE Tariff Regulation, Explanatory memorandum and assumptions taken therein, we have found following genuine serious difficulties, issues and hurdles in implementation of proposed CPE tariff structure, which we would like to bring in the notice of this Hon'ble Authority:

1. PRIMAFACIE ISSUES:

- a) **Goods:** We state that the provisions of Sec. 11 of TRAI Act do not intend to confer the power on this Hon'ble Authority to fix Retail Rates of Goods to be supplied for accessing the services like Broadcasting/DTH/Telecom. For instance the price of telecom equipment such as mobile handsets and its accessories was never fixed or regularized by Authority and the same is always left to the market forces to determine.
- b) **Broadcasting Services:** The Hon'ble Authority would appreciate construction of empowering section 11 of TRAI Act do not envisage of fixation of Retail Rates for Broadcasting Services. The Authority has always put forward mechanism(s) and formula(s) for deriving the pricing but not the actual pricing thereby ensuring that the objective to promote the competition and the principle of controlling retail price by market forces by promoting such completion is kept intact. For E.g. in case of DTH industry: in case of a la carte versus Bouquet pricing of channels the Authority have come up with formula for ensuring both options to be feasible for consumers and has not interfered in the aspect of fixing price of each channel in a la carte and bouquet.

- c) **Assumed Value of CPE is wrong:** The assumed value of CPE in the draft regulation is far lesser than the actual cost incurred by DTH operators in procuring and installing of CPE at subscribers place. The DTH industry is already facing heavy investment issue, taxation burden and is distributing CPE at subsidized rate by incurring considerable losses with a hope that consumers in the long run will compensate the incurred losses through continuous subscription. The assumption of price and other commercial are incorrect and if implemented, there would be serious impact on operations affecting business viability of DTH business. The commercial impact is separately explained herein under.
- d) **Commercial Interoperability already exists:** This Authority has already promulgated the regulation to enforce commercial interoperability of STB and by various Regulations as mentioned hereinafter and mandated the DTH operator to give subscriber the option to acquire STB either on 1) Sale or 2) Rental or 3) Hire Purchase basis. The Authority has also mandated all DTH operators to submit and publish applicable rates of it's CPE each on Sale, Rental and Hire Purchase mode. Once the customer opts for CPE on rental, he has to return the CPE to the original DTH operator and take the refund of excess rent paid by him and go for the new DTH operator. Thus the consumer is aware of all options before activation of DTH service of any operator. Therefore there is no need to promulgate separate tariff regulation thereby compulsory fixing standard rates for Rental acquisition of CPE.
- e) **Technical Interoperability:** Without touching the aspect of Technical interoperability the Authority has considered the Commercial Interoperability of STB, which the proposed Tariff Regulation covers, is itself sub judice before Hon'ble Supreme Court of India in the matter of TRAI versus Tamilnadu Consumer Progressive association & others.

Over and above, all DTH operators regularly submit quarterly PMR to this authority and thereby keep the authority abreast with their rates, charges, schemes, packages for services as well for CPE in all three options. In view of this in case any operator is not providing any option to consumer for CPE can easily be tracked and necessary directions for implementation can be issued to defaulting operator. Therefore no purpose would be served by fixing the price of CPE for Rental module.

2. EXISTING BURDON ON DTH OPERATOR AND EFFECT OF IMPLIMENTATION TARIFF ORDER:

2.1 Tax Burden: The Authority is aware that each DTH operator has invested huge amounts amount towards the business such as Rs. 40 Crores of bank guarantee with the Ministry of Information and Broadcasting (MIB) for the term of the license, Rs. 10 Crores as non refundable entry fee to wireless planning and co-ordination (WPC) Wing of the Ministry of communication and 10% of revenue as an annual fee for each financial year. The details of the imposition of taxes on DTH operators are as below:

Description	DTH
Entry Fee	10 Crores
Bank Guarantee	Rs 40 crores
License Fee	10% of revenue.
Service Tax	12.36%
VAT on hardware/STB Excise Duty on hardware	12.50% to 15.00% 12.36%
Entertainment Tax	From 6% to 25%

Thus, every DTH operator on an average has been paying approximately 40% to 45% of every rupee to the Government by way of various taxes, including but not limited to entertainment tax and Value Added Tax to the State, Service Tax, license Fee to the Central Government. These expenses are over and above the huge Capital investment in equipment and CPE and operational expenses are big hurdles to make profit and maintain sufficient cash flow.

- 2.2 Subsidy Cost:** Presently, DTH operator is distributing CPE to customer at subsidized rates by incurring the loss of 50% on each installed and activated CPE. The DTH operators incur loss considering that such loss of CPE shall be compensated in long run, if customer does not churn. Also on completion of rental period the DTH player has the option to renew the further period of agreement or recover the CPE from its customers.
- 2.3 Activation and Installation Costs:** Beside the incorrect assumption on CPE cost, the immediate outflow cost incurred by each DTH operator per activation and installation of CPE have not been taken into consideration in the proposed draft regulation. The DTH operator has to pay considerable amount to third party agencies towards expenses of installation and activation of CPE. This amount is immediately payable by DTH operators to third parties. Proposed tariff regulation fails to take the same in account while arriving at price.

Thus, with the advent of such hands-tying tariff controlling regulations being issued by the Authority and in the presence of the humungous investments being made by DTH Operators it would not be commercially feasible for the DTH Operators to continue its operations as already the books of accounts/cash flow of all DTH Operators reflecting losses/negative cash flow, as a standard DTH Operator expects to earn profits only after the humungous investment made by it is recovered. The regulations such as the proposed tariff controlling regulations would further hamper the business of the DTH industry and make it commercially unviable.

It is suggested that instead of controlling the tariff it should be best that the same should be left to the market forces to determine. We would like to state that the current market environment particularly during this period of digitization completely protects the interests of consumers and there is 100% commercial inter-operability achieved by giving them the three mandatory options. We think the purpose is already solved to enable the consumers to come out of services of one DTH player and opt for services of another one and consequently the proposed draft regulation will serve no better purpose.

3. COMMERCIAL IMPACT OF PROPOSED TARIFF REGULATION:

It will be ideal if we look at the current market scenario as to the payout of DTH Companies in the form of Installation, Activation, Smart Card, CPE, Trade Margins and other Operating costs like logistics, call centre etc, vis a vis the proposed four options mentioned in the draft regulation:-

3.1 Total Costs: It be noted that the cost of installation and activation of DTH connection including the cost of CPE actually works out to be approximately Rs. 3,500/- as against only Rs.2250 assumed under the draft regulation towards cost of CPE. Thus, the very basis on which the draft Regulation runs is lop sided and therefore this needs to be worked out in proportion to the actual costing parameters which exist in the DTH Industry, else it would be extremely prejudicial for the DTH player to be governed under the environment which the proposed Regulation would bring along with it.

3.2 Element of Total Costs: The aforesaid approximate cost of installation and activation including the cost of CPE as explained above has two elements attached to it, which are as below:-

Rs. 2,250/- the Cost of Set Top Box, ODU and its Accessories. Against this the draft regulation is giving 4 option of Security deposit as refundable or adjustable and that too amounts of Rs. 500/- or Rs. 1,000/-. We state that if the above proposition is implemented then it would further compound the financial issues being faced by the DTH operator already.

Rs. 1,250/- is the approximate initial cost that a DTH Player like us has to necessarily pay towards its Distributor and Dealers margin of Rs. 650/-, installation cost of Rs. 300/-, Cost of Smart Card Rs. 300/- per Set Top Box and also all requisite Operating costs and expenses towards Call Centers, Logistics Costs etc. per connection. All these elements are extremely critical whilst assessing the adverse impact of the proposed Regulation on the DTH player and on the Industry as a whole.

3.3. Recovery from Customer: Currently, we receive approximately Rs. 1,700/- net of taxes from Customers as an initial payment for subscribing our services, out of which Rs. 1,250/- is incurred as initial cost by DTH players and balance is recovered as advance

cost. This results in approximately a loss of Rs. 1,800/- which is not recovered from the subscribers. The DTH player incurs this loss as it has the right to bring back the CPE either at the time of completion of rental period or when the subscribers discontinue the services. However, in proposed tariff as the CPE is going to be in the ownership of the Customer after completion of five years, the DTH player would be commercially hit in a big way.

3.4 Financing Arrangement: It is important to note here that we offer multiple options to customers wherein Currently Customers are given option to opt for CPE under rental model, in which after rental period the CPE and residue value of CPE remains with DTH Players, and DTH players operates under operating lease. Were a DTH player to move from this rental scheme and opt for other scheme like hire purchase or finance lease model the pricing model of the CPE would have been totally different and would require DTH operators to function under finance lease. The proposed draft tariff mandates the DTH player to come out altogether from operating lease and go in for finance lease, which would drastically impact the financials of the DTH player. While under Regulation no. 10 i.e The Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulation, 2007 mentions that the STB to be on outright purchase or hire or rental basis however as per the proposed Tariff the rental plan is being altogether removed since by the end of the tenure the CPE belongs to the customer.

3.5. Comparison Chart:

<u>Tariff as Proposed by TRAI</u>	<u>Costs not taken into consideration</u>
<p>Total Cost of CPE: Rs. 2,250/- rental per month is based on cost of CPE on Equated Monthly Installment (EMI) Basis @ 15% per annum (@1.25% per month) for a period of 60 months.</p>	<ul style="list-style-type: none"> • Actual Total incurred cost towards CPE incurred by DTH Operator is much higher than Rs 2250. • Activation and Installation Costs: a. Outside Agency cost towards installation is not less than Rs 300 b. Distribution Cost & Trade margin is approximately Rs. 650 • Smart card cost is not less than Rs. 300 • All requisite Operating costs,

	expenses towards Call Centers, Logistics Costs etc.
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Thus, the above elucidation makes it abundantly clear that the proposed draft options are not feasible for the DTH player and needs to be revisited.

The provisions as to Alternative Tariff Package have been made subsidiary to the mandatory Standard Tariff Package, which means that the DTH Player cannot determine the Packages.

4. EXISTING REGULATIONS COVERS ASPECTS OF PROPOSED TARIFF REGULATION:

- 4.1 Provision for commercial Interoperability:-**The provisions under Regulation 4 of the Direct to Home Broadcasting Services (Standard of Quality of Service and Redressal of Grievances) Regulations, 2007 clearly mandates the DTH Service Provider to give options to provide the Direct to Home Customer Premises Equipment on outright purchase or hire purchase or rent in accordance with the schemes made by the DTH Service Provider or his agent. This provision also mandates that such schemes shall inter alia provide details like the period of hire purchase or rental with details of installments etc.
- 4.2 Mechanism for Services:** Telecommunication (Broadcasting and Cable) Services (Fourth (Addressable Systems) Tariff Order, 2010 dated 21st July 2010 by which DTH operators is already mandated to provide channels on bouquet basis as well as on a la carte offering to its Customers.
- 4.3 Hardware:** Regulation 4 of the Direct to Home Broadcasting Services (Standard of Quality of Service and Redressal of Grievances) Regulations, 2007 clearly mandates the DTH Service Provider to give options to provide the Direct to Home Customer Premises Equipment on outright purchase or hire purchase or rent in accordance with the schemes made by the DTH Service Provider or his agent.
- 4.4 Warranty:** Regulation 4A of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) (Amendment) Regulations, 2009 also mandates every DTH service provider to provide a warranty in respect of the Direct to Home Customer Premises Equipment which has been acquired on outright purchase basis and prohibits charges towards repairs and maintenance or visiting charges during the period of validity of such warranty, except the situations given under the said regulation by way of exceptions.

5. CONCLUSION:

In our view this is a clear case where a trade is not to be run by the trader but by some one , other than the trader. This is in clear violation of the constitutional arrangement as enshrined under the Indian Constitution and hence requires to be looked at very closely before any further steps in this regard.

That the Government of India to encourage competition and promote the business has adopted policy of liberalization and has shifted from License Raj to Liberalization thereby suo moto removed it's control on Retail Price fixation of various essential commodities, with an intent that promotion of competition will itself serve the purpose of retail price fixation of essential commodities. We believe that fixation of Retail Price of CPE may not serve any purpose.

In the light of the above, we earnestly beseech the Hon. Authority to kindly consider the above perspective and drop the captioned proposed Tariff Regulation and consult with the DTH Service Provider before enforcing such tariff regulations.. For such consultation we would suggest that an open forum be called for discussing the proposed tariff order which will clear all pros and cons of the same.

Thanking you
Yours faithfully,
for **Bharat Business Channel Limited**



S.K.Singh

Head –Regulatory & Compliance